[redacted]

SUPREME COURT OF THE UNITED STATES

[redacted]

THE UNITED STATES, PLAINTIFF IN ERROR,

v.

WALTER S. KAISER.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

[redacted]

[redacted]

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 401.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

WALTER S. HARSHA.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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Nos. 437, 438.

United States circuit court of appeals, sixth circuit.

THE UNITED STATES OF AMERICA
vs.
WALTER S. HARSHA.
} Error to the district court for the eastern district of Michigan.

This cause coming on to be heard, was argued and submitted to the court, whereupon, the judges of the court being in grave doubt as to certain questions of law arising therein, it was ordered that the same be certified to the Supreme Court for its instruction thereon with a proper statement of facts as follows, to wit:

Statement of facts.

Walter S. Harsha was duly appointed clerk of the circuit court of the United States for the eastern district of Michigan June 6, 1882, took the oath of office and filed his official bond in the sum of twenty thousand dollars on the same day, and is now and has from that time until the present been continuously under said appointment by the judges of said court, and with their continued assent and approval, acting as clerk of said court under a bona fide claim of title to said office, no other person having at any time made any claim of title thereto, nor has his title been otherwise questioned than as hereafter stated.

The said Harsha is now, and has been continuously since his appointment as clerk, a permanent resident of the city of Detroit, in the eastern district of Michigan, where his official duties as such clerk are to be performed, and has during the whole of said time, from June 6, 1882, to the date hereof, given his actual personal attention to such duties, and has not at any time removed from said district.

The accounts of Harsha as such clerk for the first quarter of the calendar year 1895, amounting to $482.90 were made, presented, proved, and allowed by the circuit court of the United States for the eastern district of Michigan as provided by law; said accounts were for services actually rendered, and were correct, and were duly forwarded to the Attorney-General for examination under his supervision, as provided by statute.

2 The said Harsha was duly appointed clerk of the United States circuit court of appeals for the sixth circuit, June 16, 1891, took his oath of office and filed his official bond in the sum of twenty thousand dollars on the same day, and continued to perform the duties of the office of clerk of said court from June 16, 1891, aforesaid, to and including October 2, 1894, and received salary as such clerk at the rate of $3,000 per annum for that time.

On February 24, 1894, Harsha presented to the judges of said court of appeals his resignation as such clerk, which resignation was accepted by said judges October 2, 1894.

Upon the presentation at the Treasury Department of the said accounts so forwarded to the Attorney-General, the Comptroller of the Treasury, upon his construction of the act of Congress of July 31, 1894, decided that a vacancy occurred in the office of said clerk of the circuit court of

the United States beginning August 1, 1894, for the reason that after that date Harsha continued to hold the office of clerk of the United States circuit court of appeals for the sixth circuit, the annual compensation of which office was $3,000, and that such vacancy continued thereafter until the expiration of said first quarter of the calendar year 1895, and, upon the ground of such vacancy, disallowed the said accounts of petitioner as clerk of the United States circuit court for the eastern district of Michigan for the said first quarter of the calendar year 1895.

This action was brought by Harsha to recover his fees earned as clerk of the circuit court in the district court of the United States for the eastern district of Michigan under the second section of the act of March 3, 1887, entitled "An act to provide for the bringing of suits against the Government of the United States," and after making a finding of facts and stating its conclusions of law, the district court filed the same and entered judgment for the petitioner Harsha in the sum of $482.90. The United States, by its attorney, then applied to the district judge, holding the district court for the allowance of a writ of error from this court to the district court. The writ was allowed and was issued by the clerk of this court to the district court.

The instruction of the Supreme Court is respectfully requested on certain questions of law arising on the foregoing statement of facts as follows, to wit:

First question:

Can such a judgment rendered under the act of March 3, 1887, in the circuit or district court be brought before this court for review in any other mode than as provided in section 707 of the Revised Statutes for the review by the Supreme Court of judgments of the Court of Claims, to wit, by appeal?

Second question:

Did the act of July 31, 1894, above referred to ex proprio vigore create a vacancy in the office of clerk of the circuit court for the eastern district of Michigan by reason of the fact that at the time of its taking effect the then lawful incumbent of that office was also holding the office of clerk of the circuit court of appeals of the sixth circuit?

3 Third question:

Does the general rule that officers de facto may not recover by suit compensation for services rendered as such apply to a case in which the incumbent holds his office by the continued assent and approval of the sole appointing power under a bona fide claim of title to the office when no other person has at any time made any claim of title thereto, and when the only defects in his title are a failure on the part of the appointing power to make a formal reappointment and a failure on the part of the incumbent formally to requalify after a technical vacation of the office originally held by him under a valid appointment and qualification?

WM. H. TAFT,
HORACE H. LINTON,
GEO. R. SAGE,
Judges sitting in Circuit Court of Appeals.

MAY 24, A. D. 1897.

4 United States circuit court of appeals for the sixth circuit.

UNITED STATES OF AMERICA,
Sixth Judicial Circuit, ss:

I, Frank O. Loveland, clerk of the United States circuit court of appeals for the sixth circuit, do hereby certify that the foregoing certificate and statement of facts in the case of United States of America v. Walter S. Harsha, was duly filed and entered of record in my office by order of said court, and, as directed by said court, the said certificate was by me forwarded to the Supreme Court of the United States for its action thereon.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court at the city of Cincinnati, Ohio, this 22nd day of June, A. D. 1897.

[SEAL.] FRANK O. LOVELAND,
Clerk of United States Circuit Court of Appeals for the Sixth Circuit.

(Indorsed on cover:) Case No. 16614. Term No., 401. The United States, plaintiff in error, vs. Walter S. Harsha. Certificate. U. S. circuit court of appeals, 6th circuit. Filed June 24, 1897. Supreme Court, U. S. Clerk's office. Received Jun' 24, 1897.